IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

Crl.Rev.Pet.No. 3207 of 2005()

CC.64/2001 OF JFCM-IV, KOZHIKODE
CRA.449/04 OF SESSIONS COURT, KOZHIKODE

REVN. PETITIONER:

SAJI KALLAT, S/O.VASU KALLAT,
3/1579 KALLAT HOUSE, VELLAYIL, CALICUT-11.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS:

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1. G.T.KHIYA, 6/112, (DIED)
KANNUR ROAD, KOZHIKODE-673 011.

2. STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

* SUPPLEMENTAL R3. RENUKA J BOJANI, D/O.LATE G.T.KHIYA
12A, RAMALINGHA NAGAR, 4TH CROSS,
COIMBATORE, TAMIL NADU.
(IMPLEADED AS SUPPLEMENTAL R3 AS PER ORDER DATED 13.11.06 IN CRL.M.A.NO.10462/06)

* SUPPLEMENTAL R4. NEETA RANJIT,
D/O.LATE G.T.KHIYA,
P/1/2, GROUND FLOOR,
KAMATH ENCLAVE
ICG RESIDENTIAL AREA
SECTOR - 52, NOIDA - 201 301 (U.P.)
(IMPLEADED AS SUPPLEMENTAL R4 AS PER ORDER DATED 13.11.06 IN CRL.M.A.NO.11117/06)

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR
ADV.SRI.K.MOHANAKANNAN
ADV.SMT.A.R.PRAVITHA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3207 OF 2005 A

Dated this the 8th day of October, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.64/2001 on the file of the J.F.C.M.-IV, Kozhikode challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision

Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to respondents 3 and 4 who are the legal heirs of the deceased complainant by way of compensation under section 357(3) Cr.P.C. a sum of Rs.59,000/- (Rupees fifty nine thousand only) [giving credit to the sum of Rs.35,000/- (Rupees thirty five thousand only) deposited before the trial court pursuant to the orders of this court and which amount shall be permitted to be withdrawn in equal shares by respondents 3 and 4] within four

months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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